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EXAMINER
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KUMAR, RAKESH

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3651

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## Final Rejection

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1,3,4,7-11,15,16,19,20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dessertine (US 5,020,527) in view of Hoerlins (WO 01/37909A1).

Referring to claims 1,10,15,19,20 and 23-25. Dessertine discloses a dispenser (Figure 1) for dispensing a substance (15) in individual portions counted by a multi-use counter (Figure 4) having a display incremented or decremented with the count of portions (see Figure 4) dispensed and a dispense action detector (23) for detection of portion dispensing, the dispenser comprising :

- a body (1) having a dispensing orifice (13 through opening at 5);
- a container (15) for the substance, the container (15) being integral with or accommodated on the body (1);
  - a mechanism (47) in the body (1) and/or the container for dispensing individual portions of the substance to the orifice (13), the mechanism having:
    - a displaceable element (47) for initiating the dispensing action;

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- an accommodation (25; wherein member 21 is mounted to member 1) on the body (1) for the counter (51) with its detector (23) arranged for detection of dispensing actions of the mechanism (Figure 1).

Dessertine does not disclose a closure adapted to enclosing the counter and does not disclose the closure is tamper evident.

Hoerlins discloses a dispenser wherein the closure (cap 7) is adapted to cooperate with a portion of the body (see threads for attachment of member 7 to member 3; Figure 5) providing the accommodation for removably enclosing the counter (8) in the accommodation characterized in that the closure (cap 7) is tamper evident (if removed from the dispenser).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Dessertine to have included a closure cap adapted to enclose the counter to the body of the apparatus such that the removal of the closure cap would be tamper evident if removed from the dispenser as taught by Hoerlins because enclosing the counter would prevent accidental activation of the counter and also alert a user if the closure is removed from the apparatus thus the cap is tamper evident if removed.

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Referring to claim 3,4. Hoerlins discloses dispenser wherein the closure is adapted to be irremovably connected to the body and provided with a frangible portion through which the counter can be removed (see Figure 4).

Referring to claim 7. Hoerlins discloses dispenser wherein the closure is a cap (7) over the end of the receptacle to captivate the counter (8).

Referring to claim 8,9,11. Hoerlins discloses dispenser wherein the closure (7) has a window for viewing (19) the display of the counter (8).

### ***Response to Arguments***

Applicant's arguments filed 06/01/2010 have been fully considered but they are not persuasive. See modified rejection above.

In response to applicant's argument that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one

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of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, the Horlin discloses a closure (cap 7) adapted to cooperate with a portion of the body, the closure removably enclosing the counter in the accommodation (see Figure 2a) disposed over the counter mechanism. It is in the view of the Office the teaching of removing the closure is tamper evident because a user would realize the closure has been removed.

The applicant argues "that neither Dessertine nor Hoerlin disclose a dispenser having a tamper evident enclosure as required by the amended claims." In view of the Office Hoerlin discloses an apparatus wherein the housing of the dispenser comprises a counting wheel (8) and a control wheel (9) enclosed by a circular cap denoted by member (7). The cap (7) serves as an outer casing for the counting mechanism (2) and further the cap is provided with an indicator window allowing visual access to the counter mechanism underneath. Hoerlin attaches the cap enclosure to the dispensing apparatus by the means of threads disposed on the dispenser housing (see Figure 5).

Thus, the cap encloses the counting mechanism and attaches the counting mechanism to the apparatus. It is thus, cited that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Dessertine to include a outer casing cap as taught by Hoerlin because the outer casing cap could be used to attach the counting mechanism to the dispensing

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apparatus and furthermore would be tamper evident if the outer casing cap is removed from the apparatus.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571) 272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/  
Supervisory Patent Examiner, Art  
Unit 3651

/RAKESH KUMAR/  
Examiner, Art Unit 3651